

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

Richard Wilson, on behalf of himself	:	
and all others similarly situated	:	
Plaintiffs,	:	CIVIL ACTION
	:	
v.	:	No. 98-CV-1647
	:	
Independence Blue Cross	:	
Keystone Health Plan East, Inc., and	:	
Keystone 65 Plan, a legal entity	:	
Defendants.	:	

MEMORANDUM

GREEN, S.J. **, 1999**

Presently pending is Class Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Expenses and Defendants' Response in Opposition thereto.. For the reasons set forth below, Class Counsel's motion will be granted in part, whereby Class Counsel will be awarded reduced attorney's fees.

Class Counsel seeks \$89,309.90 in attorneys fees and expenses an incentive award to Class Representative Plaintiff Richard Wilson in the amount of \$1,000.00. On March 27, 1998, Plaintiff Wilson filed a Class Action Complaint against defendants. The Complaint alleges certain violations of ERISA as Plaintiff asserts that defendants participated in a "bait and switch" scheme to lure retirees into enrolling in their health care plan. The Complaint specifically states that materials defendants provided to Plaintiff and a group of Sears retirees (the "Class") provided for a \$5.00 copayment for referred visits to specialty care providers; however, those retirees were instead required to pay a \$15.00 copayment. Shortly after the Complaint was filed defendants offered, on May 13, 1998, to provide Plaintiff Wilson and the Class with the \$5.00 specialist copayment as provided for in some of the advertising materials. On June 4, 1998,

Class Counsel accepted defendants' offer behalf of the Class. The Stipulation and Agreement of Compromise, Settlement and Release the parties entered on April 8, 1999, provides for a \$5.00 copayment for specialists visits and a \$10.00 direct reimbursement for specialist visits where Class members where required to pay a \$15.00 copayment. Defendants paid \$6,800.00 to the Class as a result of the settlement reached.

Class Counsel's instant motion states that an award of attorney's fees and expenses is appropriate as they have obtained a settlement on behalf of the Class which consists of full and complete recovery on all claims. Defendants oppose Class Counsel's motion and assert that Class Counsel's fee application is grossly excessive because Defendants offer made to Plaintiff Wilson shortly after the filing of the Complaint is the same as the settlement agreement ultimately entered into by the Class. Defendants also argue that the full and complete relief paid out to the entire class is less than 1/13th of Class Counsel's request for attorneys' fees. In the alternative, Defendants argue that Class Counsel should only be awarded \$2,000.00 as this amount more accurately approximates what would represent a contingent fees in this case.

It is within the district court's discretion to award reasonable attorney's fees and costs to prevailing parties under ERISA. 29 U.S.C. § 1132(g)(1); McPherson v. Employees' Pension Plan of Am. Re-Ins. Co., 33 F.3d 253, 254 (3d Cir. 1994). Under the circumstances, I find that Plaintiff and the Class are prevailing parties under the ERISA statute and are therefore entitled to an award of attorneys' fees. Nevertheless, fees awarded must be reasonable. In general, Class Counsel's fees and hourly rates are reasonable, however, some of the documented hours are duplicative and/or excessive. The award will be reduced accordingly.

Class Counsel states that the majority of its time in this case falls into the following categories: (1) researching Plaintiff's claims and preparing the Complaint; (2)

preparing pleadings, motions and memoranda; (3) class actions procedures; and, (4) discovery and negotiations with Defendants. It is appropriate to deduct from Class Counsel's award time spent categorized as discussions regarding "case strategy," discovery, and negotiating with Defendants as the final settlement agreement entered into on behalf of the class is what was originally offered by Defense counsel on May 13, 1998. Furthermore, because Class Counsel spent almost four days researching ERISA prior to drafting the Complaint and additional 3 days drafting the Complaint, the 22.5 hours spent revising the Complaint as well as time spent on an Amended Complaint (which was never filed) will be deducted from the award. Other hours deducted include time spent: for undocumented research and in excessive hours researching ERISA fee shifting and fee petitions; preparing eleven Stipulations to Extend Time (these were half-page documents which were identical in all respects and should only have required de minimis time in drafting); excessive fees in serving the Complaint, a largely clerical undertaking; and several conversations amongst Class Counsel regarding the terms of the settlement agreement and stipulations. Class counsel will however, be granted fees for hours expended responding to Defendant's Motion to Dismiss, which was filed shortly before an agreement was reached between the parties. The hours deducted are as follows:

HOURS DEDUCTED OR REDUCED

<u>Date</u>	<u>Description</u>	<u>Reduction</u>
ATTORNEY - EA Spector		
5/26/94	Meeting w/ Jeffrey Kodroff	118.75
6/3/98	Mtg w/ Jeffrey Kodroff re: strategy	118.75
6/19/98	Mtg w/ JK and AA re strategy	118.75
ATTORNEY - JL Kodroff		
4/10/98	Serve Complaint	300.00
5/28/98	Research ERISA fee drifting	1200.00
5/27/98	Edit Discovery	600.00

HOURS DEDUCTED OR REDUCED (cont'd)

<u>Date</u>	<u>Description</u>	<u>Reduction</u>
ATTORNEY - JL Kodroff		
5/11/98	Edit Discovery requests; meet w/ AA	450.00
5/26/98	Edit resp, admissions and RPD's, etc	450.00
6/1/98	Follow up discovery requests	600.00
6/1/98	Amended Complaint (never filed)	150.00
6/15/98	Lodestar and Expense reports for defense counsel	75.00
ATTORNEY - AD Abramowitz		
3/17/98	Revise Complaint	1575.00
3/18/98	Revise Complaint	1575.00
3/19/98	Revise Complaint	1800.00
3/20/98	Revise Complaint	1462.50
5/28/98	Research on ERISA state of limitations	390.00
4/24/98	Prepare Stip.. to Accept Svc, discuss w/ D Penn (duplicative)	97.50
6/11/98	Prepare Mot To Extend Time for filing response	195.00
7/9/98	Prep and file Stip.. to Extend Time to file Oppos'n to Mot to Dismiss	97.50
5/20/98	Conversation w/ JK re class discovery	48.75
5/20/98	Draft discovery, etc.	585.00
5/21/98	Draft interrogatories, etc.	1170.00
5/26/98	Conversation w/ JK re admissions, etc.	97.50
5/26/98	Revise interrog., etc	487.50
5/27/98	Meet w/ JK re class certification discovery	48.75
5/28/98	Revise interrog., etc.	48.75
5/28/98	Revise discovery requests, etc.	97.50
6/8/98	Revise Stipulation to Settlement, etc	146.25
6/16/98	Research attorny fees under ERISA in prep for settlement	780.00
6/23/98	Memo to file re; settlement	48.75
6/24/98	Conversation w/ law clerk, etc.	48.75
7/8/98	Conversation w/ JK re Stipulation, etc.	146.25
7/8/98	Prepare Stip. to Extend Time, etc.	97.50
7/24/98	Stip. to Extend Time	48.75
8/10/98	Fifth Stip. to Extend Time	48.75
8/13/98	Conversation w/ D. McClain re settlement Stip., etc.	97.50
8/18/98	Correspondence to D. McClain	97.50
9/8/98	Correspondence to D. McClain re settlement	112.50
9/11/98	Conversation w/ D. McClain re settlement	48.75
9/11/98	Prepare stipulation and correspondence to B Flaherty	97.50
9/15/98	Review defendants' counsel letter regarding website	48.75
9/16/98	Research for ERISA damages in preparation for settlement	97.50
9/17/98	Review cases for ERISA damages	48.75

HOURS DEDUCTED OR REDUCED (cont'd)

<u>Date</u>	<u>Description</u>	<u>Reduction</u>
ATTORNEY - AD Abramowitz		
9/28/98	Prepare correspondence to D. McClain re settlement, etc	112.50
9/28/98	Conversation w/ Dan McClain re 8th Stipulation, etc.	97.50
9/29/98	Research and prepare correspondence re IBC web page	195.00
9/30/98	Prepare correspondence to opposing counsel re web page	225.00
10/19/98	Conversation w/ J Kodroff re Stip., etc.	97.50
10/19/98	Conversation w/ J Kodroff re settlement papers, etc	97.50
11/4/98	Correspondence to D. McClain re stipulation	48.75
11/4/98	Review letter from Flaherty, etc.	195.00
ATTORNEY - JH Grabar		
12/1/98-12/13/98	Research and Memoranda	8925.00
Total Attorneys Fees' Deducted		\$25,965.00
Total Attorneys Fees 85,798.75(requested) - 25,965.00(deducted) =		59,833.75
Expenses		<u>3,511.15</u>
Total Award (Fees & Expenses)		63,344.90

In conclusion, the Court will grant Class Counsel's Motion for Attorneys' Fees and Reimbursement of Expenses in part, whereby the original request will be reduced as set forth in this memorandum and summarizes as follows: the total attorneys' fees request is reduced from \$85,798.75 to \$59,833.75. The request for reimbursement of expenses will not be reduced nor will Plaintiff Richard Wilson be granted an incentive award.

An appropriate order follows.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

Richard Wilson, on behalf of himself	:	
and all others similarly situated	:	
Plaintiffs,	:	CIVIL ACTION
	:	
v.	:	No. 98-CV-1647
	:	
Independence Blue Cross	:	
Keystone Health Plan East, Inc., and	:	
Keystone 65 Plan, a legal entity	:	
Defendants.	:	

ORDER

AND NOW, this day of June 1999, IT IS HEREBY ORDERED that Class Counsel's Motion for and Awarded of Attorneys' Fees and Reimbursement of Expenses is GRANTED, in part. Class Counsel is awarded attorneys' fees and expenses in the amount of \$63,344.90.

IT IS FURTHER ORDERED that the Clerk of Court is directed to close this matter.

BY THE COURT:

CLIFFORD SCOTT GREEN, S.J.